FARAD CONTINUTION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Civil Application No. l24l of 2005
in
First Appeal St No.6l80 of 2005

Office Notes,Office Memorandum of Coram appearence,Court's Orders & Directors and Registrar's Order	Court or Judge's Order

Ms Gauri Godse for applicant
Mr R.R.Salvi for respondent nos l,l-2, l-4, l-5,l-6,i.e. IC.D.El to lE4, lF, lG, lH
Mr.J H Joshi for respondent no. 7

CORAM; A.M.KHANWILKAR J.

DATED 2.2.2006

P.C.

l. This application is for condonation of delay in filing the first appeal against the judgement and decree dated 5.l2.2000 whereby the suit filed by the appellants has been dismissed as having abated. Indeed, going by the date on which the impugned order was passed and presentation of the present first appeal on 3.5.2005, it appears that

there is long delay. However, the delay is explained by the appellants on the assertion that the appellants were not aware about the order passed on 5.l2.2000. The appellants became aware of the order for the first time on 30.4.200l. The appellants were informed by his advocate on l5.3.200l and thereafter applied for certified copy of the impugned order on the same day. The certified copy was ready on l5.5.200l. Thereafter as per the legal advice given to the appellants, the appellants initially filed appeal before the district court on ll.6.200l. Later on it was revealed that the appeal cannot proceed before the district court as it was outside the pecuniary jurisdiction of that court. Accordingly the appellants filed an application before the district court on l5.7.2004 for return of the appeal so as to present the same before the appropriate court. That application was granted on 4.ll.2004. Certified copy of the said order was applied by the appellants on

6.ll.2004 and same became made available on l5.l.2005. After receipt of the certified copy once again the appellants contacted their advocate, who initially advised the appellants to file appeal from order against the order dated 4.ll.2004. In due course, however, the appellants were inter acting with the advocate, who advised to file the present appeal, which came to be lodged in this court on 3.5.2005.

2. In so far as the time spent by the appellants in pursuing the remedy before wrong court from ll.6.200l to l5.l.2005, same will have to be excused for bonafide mistake of the appellants acting under the wrong legal advice. The respondents have contested this application on the ground that no explanation whatsoever is forthcoming as to the reason which prevented the appellants from filing the appeal immediately after the impugned judgement was passed on 5.l2.2000 till 30.4.200l. In so far

as this period is concerned, from the pleadings I find that the appellant no l was hospitalised for arthritis, backache and gastric ailment initially from l0.5.2000 to 30.7.2000. The appellant was once again hospitalised on l9.7.2000 for the ailment of hyper tension, hyperdideshenia and uric acid. He was under treatment from l9.7.2000 to 30.4.200l for the said ailment. The explanation offered by the appellants seems to be bonafide.If it is so the period between 5.l2.2000 till 30.4.200l will have to be excused. In that case the question is whether there is sufficient cause shown by the appellants for the period from l5.l.2005 to 3.7.2005. As mentioned earlier, the case of the appellants is that after the certified copy was made available the appellants contacted their advocate inspite of the problem faced by them in respect of their mother-in-law’s illness and other matters, in February 2005. Initially the appellants were advised to file Appeal From Order, but later

on, after deliberations with other advocate, the appellants were advised to file the first appeal, which came to be filed on 3.5.2005.

3. From the pleadings on record it appears that it is not the case where the appellants were not pursuing their remedy. On the other hand the appellants did pursue their remedy depending on the advice, as was given by their advocate. For the ill-advice given by their advocate, the appellants cannot be made to suffer. In the interest of justice,therefore, in my opinion the appellants deserve indulgence of this court. Hence the application is allowed in terms of prayer clauses (a) and (b) on condition that the appellants shall pay costs quantified at Rs.l000 to the High Court Legal Services Authority within two weeks from today, failing which the office to proceed on the basis that this application is dismissed for non prosecution. If the cost is paid in time and receipt

whereof is produced before the Registry, office to process the matter further and place the first appeal for admission as per its turn. Order accordingly.